IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6294 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MADHUSUDAN GORDHANDAS CHAVANAWALA - Petitioner(s)

Versus

PRABHABEN AMARSINGH MALIYA - Respondent(s)

==========

Appearance :

M/S THAKKAR ASSOC. for Petitioner(s) : 1,
MR PJ YAGNIK for Respondent(s) : 1,
None for Respondent(s) : 1.2.1, 1.2.2,1.2.3

==========

CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 23/12/2005

CAV JUDGMENT

1.By filing this petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and award dated 15.2.96 passed by the

Labour Court, Rajkot in Reference (LCR) No.706 of 1988, by which the Labour Court has directed the petitioner to reinstate the respondent – workman on his original post and also directed the petitioner to pay 90% back wages for the intervening period.

2. It is the case of the petitioner that the respondent was taken in service as unskilled worker in 1983 and the respondent was helping in mixing Chevda at his residential premises and the respondent – workman never used to come to the shop of the petitioner. It is the case of the petitioner that in 1984, the respondent – workman left the services of the petitioner and joined the brother of the petitioner who is also running the shop of mixture. It is the case of the petitioner that the respondent – workman left the services in 1995.

3. Ultimately, the respondent – workman raised the industrial dispute which was referred to the Labour Court, Rajkot and numbered as Reference (LCR) No.706 of 1988. The Labour Court, after appreciating the evidence on record and after hearing both the parties, by its judgment and award dated 15.2.1996 directed the petitioner to reinstate the petitioner in service with 90% back wages for the intervening period.

4. Being aggrieved and dissatisfied with the said judgment and award dated 15.2.96 passed by the Labour Court,

Rajkot in Reference (LCR) No.706 of 1988, the petitioner has filed this petition under Article 227 of the Constitution of India.

5. Heard the learned advocates for the parties and perused the material placed on record.

6. Having heard the learned advocates for the parties and having perused the material placed on record, it can be seen that the respondent – workman was in service of the petitioner who expired during the pendency of this petition and his heirs and legal representatives came to be joined as party – respondents in the present proceedings. Therefore, the question of reinstatement now does not survive. The question which requires to be considered by this Court is granting of 90% back wages in favour of the respondent – workman for the intervening period. It is required to be noted that this is a petition under Article 227 of the Constitution of India and this Court is not required to reappreciate the evidence since the Labour Court has passed the judgment and award after appreciating the evidence on record. It can also be seen that it is not the case of the petitioner that before terminating the services of the workman, the retrenchment compensation was paid. Affidavit-in-reply has been filed by the respondent – workman, wherein it is stated that the

respondent – workman had sincerely tried to get service elsewhere but he did not succeed and thereby he was not in gainful employment. Considering the facts and circumstances of the case, interest of justice would be served if the petitioner is directed to pay 50% back wages for the intervening period instead of 90% back wages as awarded by the Labour Court.

7. In view of the aforesaid discussion, this petition is partly allowed. The judgment and award of the Labour Court dated 15.2.96 passed in Reference (LCR) No.706 of 1988 is modified to the extent that the petitioner is directed to pay 50% back wages instead of 90% back wages as awarded by the Labour Court.

8. Rule is made absolute to the aforesaid extent. No order as to costs. The petitioner is directed to pay 50% back wages to the heirs and legal representatives of the deceased respondent – workman within a period of 2 months from the date of receipt of this order.

(SHARAD D DAVE, J)

srilatha